



*The Commonwealth of Massachusetts*

DISTRICT ATTORNEY OF SUFFOLK COUNTY

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Edward Davis, Commissioner  
Boston Police Department  
One Schroeder Plaza  
Boston, MA

**RE: November 21, 2007 Shooting Death of Marquis Barker at Morton Street**

Dear Commissioner Davis:

The Suffolk County District Attorney's Office has concluded its investigation into the November 21, 2007 death of Marquis Barker after he was shot by Boston Police Officers at Morton and Norfolk Streets in Dorchester.

As you know, the District Attorney, by statute, has the duty and authority to oversee all death investigations within the City of Boston. As such, the primary goal of our investigation was to determine if any person bears criminal responsibility in connection with Mr. Barker's death.

Our investigation included a review of the detailed reports and investigatory materials compiled by the Boston Police Department's Firearm Discharge Investigation Team. The evidence included taped statements of numerous civilians who made observations of Mr. Barker during the time leading up to the shooting; taped statements of family members who made observations of Mr. Barker during the time leading up to his initial encounter with Boston Police Officers; taped statements given by Boston Police Officers during their initial encounter with Mr. Barker on Fuller Street and in the moments before the shooting at Morton and Norfolk Streets; investigative and field reports; civilian 911 calls; Boston Police Department dispatch transmissions; autopsy report from the Office of the Chief Medical Examiner; ballistics evidence collected at the scene; physical evidence including the pellet gun that was in Mr. Barker's possession; and photographic and video representations of the scene.

Our legal analysis as to whether or not the actions of the involved police officers could constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. To be a lawful use of deadly force, the actions of the officers must be objectively reasonable, in light of all of the facts and circumstances confronting them. The determination of such reasonableness is judged from the perspective of a reasonable officer at the scene rather than the 20/20 vision of hindsight. As stated by the United States Supreme

Court, "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."

Our thorough review of the facts and circumstances surrounding the fatal shooting of Mr. Barker determined that the officers fired in self-defense after Mr. Barker ignored repeated commands to drop what he represented was a loaded gun and then raised and pointed it at a responding officer. Mr. Barker's possession and use of the gun was conclusive and undeniable having been established by civilian and law enforcement witnesses. I, therefore, have concluded that the officers acted reasonably and lawfully and that no criminal charges are warranted.

### **BARKER'S BEHAVIOR PRIOR TO POLICE RESPONSE**

On November 21, 2007 at approximately 5:15 p.m., Marquis Barker's wife, Kim Sanders Barker arrived home at 238 Fuller Street.<sup>1</sup> Mr. Barker entered the home shortly thereafter. Noticing an odor of alcohol coming from Mr. Barker, Mrs. Barker asked where he had been. Mr. Barker replied that he had been out buying Christmas cards. After Mrs. Barker told Mr. Barker his story was not panning out, the conversation escalated into a verbal argument. Mr. Barker was distressed over his health, his parents' health and care, his relationship with his wife, and finances. At one point, he grabbed his wife's arm. When Mrs. Barker told Mr. Barker she could not believe he was putting his hands on her, he threatened to call the police himself. From the time he arrived at 238 Fuller Street, Mr. Barker exhibited erratic, aggressive, suicidal, and assaultive behavior. This behavior was directed to his family, neighbors, and responding police officers.

Mr. Barker's behavior turned suicidal when he asked his wife where his gun was – that he was going to take his gun and shoot himself outside. When she asked with what gun, he responded that he had a pellet gun upstairs. Troubled by her husband's behavior, Mrs. Barker fled from 238 Fuller Street to her neighbor's house, Helen De-Allie. She told Ms. De-Allie that her husband was not acting normal, that he was yelling and screaming and threatening to shoot himself with a gun.

Mr. Barker continued to act erratically when he confronted his stepdaughter upstairs inside 238 Fuller Street. He forced the door to her bedroom open, took her television from the dresser and threw it onto the floor. As she was hiding in the corner of her bedroom, he grabbed her by the neck and threw her onto the bed. The assault stopped when his stepson came into the room and told Mr. Barker to stop. Mr. Barker told his stepson to take care of his younger brother and sister, that he loved them, and that he was going to kill himself.

Seeking to at least give the appearance of making good on his threat, Mr. Barker retrieved the pellet gun from inside 238 Fuller Street. He then went outside where his

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<sup>1</sup> Marquis Barker, age 38, lived at 238 Fuller Street in Dorchester with his wife, Kim Sanders Barker, and their four children - Tyreek Barker (age 7), Tyrah Barker (age 3), Medina Yaya (age 17), and Hakeem Yaya (age 15). Tyreek and Tyrah are Mr. Barker's biological children. He had been in a relationship with Kim Sanders Barker since approximately 1996 and they were married in 2003.

unpredictable and assaultive behavior continued. At various times prior to the police arriving, he was in the street waving the gun saying he was ready to die; he pointed the gun in a threatening manner at a neighbor's son; he pointed the gun at his own head saying he wanted to kill himself; and he pulled a neighbor from her car at gunpoint as she was arriving home from work.

Based on interactions with and observations of Mr. Barker by neighbors and family members, multiple civilian 911 calls were made. Mr. Barker's wife stated in her call that he was "losing it" and that he had a pellet gun that he was pointing at cars. In the next three 911 calls made by civilians making direct observations of Mr. Barker, the callers reported a man with a gun, waving it and pointing it, on Fuller Street. During a subsequent broadcast over the Boston Area Police Emergency Radio Network there was never any definitive information that Mr. Barker had a pellet gun as opposed to a real gun. When asked, the dispatcher broadcast that it possibly could be a real firearm.

The pellet gun recovered from Barker, the GAMO PT-80, is described as "authentic in all respects right down to the last detail. Feels like you are holding the famous SIG combat pistol right in your hand. The GAMO PT-80 sets the bar for authenticity and rapid fire shooting fun."<sup>2</sup> The pellet gun was described by officers responding to Fuller Street as looking similar to Boston Police Department issued firearms, but a little smaller. Based on the color, size, and shape of the pellet gun, coupled with the broadcast for a man with a gun and Mr. Barker's behavior, officers acted under the reasonable assumption that the pellet gun was a real semi-automatic weapon.

### **POLICE RESPONSE**

Boston Police Officers Daniel Donahue and Garvin McHale were working their normal first half shift on November 21, 2007. They were in uniform and assigned to a marked cruiser. The department number for the vehicle was 5130. During the early part of their tour, they received a call while they were on Washington Street. The nature of the call was a man in the street with a gun at 238 Fuller Street. As the two officers made their way from Codman Square toward 238 Fuller Street, they activated the emergency lights and siren. They also heard updates over the Boston Area Police Emergency Radio Network regarding the call – that there was a man in the street, possible firearm, threatening people with a gun. Officers Donahue and McHale arrived on Fuller Street from Milton Street.<sup>3</sup> Officer McHale recalls hearing another officer ask if it was a real gun and the dispatcher stated it was uncertain – that it possibly could be a real firearm.

As they arrived at the intersection of Milton and Fuller Streets they saw a young, light-skinned black male, approximately seventeen years old, running up Fuller Street onto Milton Street. As they made eye contact with him, he pointed down Fuller Street. He appeared frightened. He was yelling something but they could not make out what he was saying. Looking further down Fuller Street the officers observed a black male standing in the middle of

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<sup>2</sup> See [CobraAirguns.com](http://CobraAirguns.com); Gamo PT-80, Air Pistol .177 Caliber 410 fps Semi-Auto.

<sup>3</sup> Prior to their arrival, several civilians, including family members, had contact with and/or made observations of Marquis Barker. Numerous 911 calls were made as a result of the observations and/or contact.

Fuller Street. He appeared to be walking in a circle. There was also a group of people on the right hand side of the street and the individual appeared to be gesturing toward them. Initially, he appeared to be carrying a black firearm in his right hand. He did not appear to be steady on his feet.

After turning onto Fuller Street, the headlights to vehicle 5130 remained illuminated while the siren and emergency lights were turned off. It was now approximately 6:00 p.m. Officer McHale commented to Officer Donahue that the man had a gun. They made their observations after making the complete turn from Milton to Fuller Street and the headlights illuminated the area and Mr. Barker. Not long after vehicle 5130 turned onto Fuller Street, Mr. Barker's attention focused on the cruiser and he started walking in the middle of the street toward it. Officer Donahue pulled over and parked on the left hand side of Fuller Street. Mr. Barker was about twenty yards away from vehicle 5130 when it stopped. Mr. Barker had the gun pointed to the ground as he walked toward the officers. Officer McHale described the position of the gun as the "low ready" which is the same way Boston Police Officers are trained. Officer McHale described the weapon as looking similar to the department issued firearms but a little smaller.

After placing the vehicle in park, Officer Donahue exited and unholstered his firearm. He felt vulnerable sitting in the vehicle and felt as if he were in immediate danger. Officer Donahue used the door as cover. Officer McHale was shouting commands to drop the gun but Mr. Barker ignored them as he continued advancing on vehicle 5130. They also repeated over the air they had a suspect with a firearm. As he ignored the commands, Officer Donahue started to retreat to the rear of the vehicle. As he reached a distance of approximately 10 feet Mr. Barker stated "Shoot me, kill me, do it now, finish me" while taking his right hand with the firearm and placing it to the side of his head. Officer McHale also sought cover at the rear of vehicle 5130. In order to get a different angle at Mr. Barker, Officer Donahue sought cover beside a dump truck that was parked on the right hand side of the street directly across from Mr. Barker. As Officer Donahue changed positions, Officer McHale moved to his right to the engine block area of vehicle 5130. Both were still shouting commands at Barker to "Drop the gun. Stop right there. Stop Moving. Drop the gun. Do it now." Mr. Barker's response was to shout back "Shoot me. Kill me. Do it."

As he held the gun to his head and ignored commands to drop the gun, Mr. Barker drew near to the driver's side door of vehicle 5130. As he reached the driver's door he quickly put the gun down from his head, jumped into the driver's seat and closed the door. Officer Donahue was continuing to give commands for Mr. Barker to stop right there. The commands were ignored. As Mr. Barker got into vehicle 5130 Officer McHale continued circling the vehicle moving from the engine block area to the driver's door. Officer McHale reached the driver's side door and tried to open it. Commands to step out of the vehicle were ignored. Officer McHale observed one of Mr. Barker's hands go to the steering wheel and the other to the gearshift. Mr. Barker was not holding the firearm at this time. As he tried to open the door, Officer McHale saw what he believed was a firearm on Mr. Barker's lap. As he reached in and grabbed him, Mr. Barker drove off in vehicle 5130 heading down Fuller Street toward Morton Street.

Officer McHale put out over the air that the suspect had a firearm, took control of vehicle 5130, and was heading down Fuller Street toward Morton Street. Officer McHale then recalled at least one, possibly two marked cruisers drive past him. He stopped the next cruiser

and got into the back seat. This marked cruiser was occupied by Officers Tom Finn and Brian McLean. They went in the same direction as vehicle 5130 and took a right onto Morton Street where Officer McHale observed additional police vehicles. He saw the additional marked units stopping in front of the car he was driving just over Morton Street right next to Walgreen's. Among the officers responding to the Walgreen's location were Officers Jeff McLean, Clair Duffy, Henry Doherty, and Martin Harrison.<sup>4</sup>

Officer Jeff McLean was working with Officer Henry Doherty. They were assigned to marked cruiser 7110. They were both in uniform. After arriving at the Walgreen's location, Officer McLean exited his vehicle and was at the passenger side of vehicle 5130. Mr. Barker was in the driver's seat. As Officer McLean looked into the passenger window, Mr. Barker raised his right arm and had a gun in his hand pointing directly at Officer McLean. Thinking he was going to get shot, Officer McLean quickly moved position to the rear of vehicle 5130. As he was doing this he heard a gunshot and was convinced that Mr. Barker actually fired at him. Thinking his partner was in an exchange of gunfire he took aim at Mr. Barker from the rear of vehicle 5130 and discharged his firearm three times.

Officer Doherty heard Officer McHale's transmission of a man with a gun. Officers Doherty and McLean responded to Fuller Street but never actually went up Fuller Street. They were at Fuller and Morton Streets and saw a marked cruiser slowly exiting Fuller onto Morton.<sup>5</sup> After making a u-turn in pursuit Officer Doherty heard a radio transmission that the cruiser was taken by a person with a firearm. During the pursuit the emergency lights and siren were activated. Officer Doherty observed vehicle 5130's speed increase and collide with a vehicle during the pursuit. As it approached Walgreen's, the driver (Mr. Barker) lost control and the cruiser spun counterclockwise coming to a rest inside Walgreen's parking lot.

Officer Doherty saw Mr. Barker with his hands on the steering wheel in the 10 and 2 positions. Officer Doherty then unholstered his weapon. Mr. Barker took his hands off the wheel and lowered them out of Officer Doherty's sight. Officer Doherty was giving commands to Mr. Barker to show his hands. Mr. Barker ignored the repeated commands. Mr. Barker never showed his hands. As Officer Doherty approached the driver's door with his gun at the low ready he saw Mr. Barker raise his arm and he was holding a semi-automatic gun. The gun was directly facing his partner, Officer McLean, who was on the passenger side. Mr. Barker ignored repeated commands to drop the weapon. Thinking Mr. Barker was going to shoot his partner Officer Doherty fired his weapon three times at Mr. Barker and struck him on the side of the head consistent with his position on the driver's side of vehicle 5130. Officer Doherty heard additional shots fired as well. Given Mr. Barker's actions leading up to and at the time of the shooting, our office has concluded that Officer Doherty's actions were both reasonable and lawful.

Officer Clair Duffy was on duty in uniform and assigned to cruiser 7111. She responded to Fuller Street. She got to within 20 feet of Mr. Barker and he appeared to be holding a genuine firearm. There was nothing to distinguish it from being a pellet gun or an actual semiautomatic. She observed Mr. Barker holding the gun to his head. He refused all commands to drop the gun. He then stole a marked cruiser. She then got back in her marked

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<sup>4</sup> Officers McLean, Duffy and Doherty each fired three rounds. Officer Harrison fired eight rounds.

<sup>5</sup> This was vehicle 5130 being driven by Mr. Barker.

cruiser and pursued. At the end of the pursuit she crashed into the rear of Officer Martin Harrison's marked cruiser. Mr. Barker was refusing all commands to get out of the car and drop the gun. When Officer McLean took a position on the passenger side of cruiser vehicle 5130, Mr. Barker raised his hand with the gun in it and pointed it at Officer McLean. When she saw Mr. Barker point the gun at Officer McLean he covered up his face to protect himself. She discharged her firearm three times as she faced vehicle 5130 at this point. Officer Duffy was shooting at Mr. Barker to prevent him from shooting Officer McLean or herself.

Officer Martin Harrison was filling out a report at the desk in Area B-3 he heard a radio transmission. The dispatcher was sending two rapid response units and a patrol supervisor to a location in the district - Fuller Street. He understood this to be two marked units each carrying two officers. He immediately asked a cadet to look up the nature of the call on the computer because he found it unusual for five officers to be heading to one address. As he waited for the information from the cadet he heard a radio transmission. He heard who he believed to be Officer McHale screaming in to the microphone "He's got a gun. He's got a gun."

Upon hearing Officer McHale, he ran out of the station toward his vehicle which was parked on Morton Street facing Harvard Street (westerly). He made a u-turn and activated his lights and siren. Officer Harrison was operating marked cruiser 5166. He was working in uniform. As he was driving he heard another transmission who he believed was Officer McHale yelling "Drop the gun. Drop the gun". Officer Harrison then heard the dispatcher say something to the effect of all units head to Fuller Street. As he was driving to that location there was a marked unit in front of him. He did not know who was driving. He crossed Norfolk and Evans Street and then started going up the incline toward Fuller Street.

Officer Harrison then heard another transmission given out by who he believed was Officer McHale saying "He stole a cruiser. He's got our car". He believed the department number for the cruiser was broadcast as well. The direction broadcast was on Fuller heading toward Gallivan (Morton) and as he continued in that direction, Officer Harrison saw a cruiser on Fuller approaching Morton. It was being operated by a male with a white t-shirt. The location of the cruiser corresponded with Officer McHale's broadcast. As the stolen cruiser crossed over Norfolk Street the driver (Marquis Barker) lost control and the cruiser fishtailed and skidded in reverse until he crashed. The point of rest was on Morton Street at the Walgreen's entrance with vehicle 5130 facing out into the street.

After vehicle 5130 came to a stop Officer Harrison saw Barker with his right arm leaning out the passenger window and then point his gun at Officer McLean. As a result, Officer Harrison fired his weapon a total of eight times as he faced vehicle 5130.

### **CONCLUSION**

These facts support the conclusion that Officers Doherty, Harrison, Duffy, and McLean acted reasonably and lawfully in self-defense. The officers fired when Barker ignored repeated commands to drop his weapon and show his hands, not only on Morton Street, but earlier on Fuller Street before he commandeered vehicle 5130. Not only did he refuse these repeated commands but he chose to point what reasonably appeared to the officers to be a loaded semi-automatic weapon at Officer McLean. As he made that motion Officer McLean reasonably thought he was going to be shot and made an attempt to get out of the line of fire. The

officers then fired at Barker. Accordingly, I have determined that criminal charges are not warranted.

Sincerely,

Daniel F. Conley  
District Attorney